

Remarks

The Applicant respectfully requests reconsideration of this application in view of the following remarks. In this response, no claims have been amended, cancelled or added. Hence, claims 1-41 remain pending for examination.

Election/Restriction

In the Office action, the Examiner indicated the application contains claims directed to six patentably distinct species. The undersigned respectfully traverses the restriction requirement and requests the Examiner to reconsider the restriction requirement in view of the arguments set forth below, which support a finding that the Office action has failed to make out a *prima facie* case for the restriction requirement and/or the restriction requirement is in error. To the extent the Examiner finds the arguments presented below to be unpersuasive, the Applicant hereby elects with traverse the claims of group I (i.e., claims 1-14) and reserves its rights with respect to petitioning the Director to review the restriction requirement.

As an initial matter, pursuant to the *Manual of Patent Examining Procedure* §803 I (8th ed., rev. 5, 2006) (hereinafter "**MPEP**"):

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) *The inventions must be independent ... or distinct as claimed ...; and*
 - (B) *There would be a serious burden on the examiner if restriction is not required ...*
- (emphasis added).

The MPEP further requires an examiner to concisely state the particular reasons relied on for holding that the inventions as claimed are either independent or distinct. "A mere statement of conclusion is inadequate" (see MPEP §808.01).

The undersigned respectfully submits a *prima facie* case has not been established with respect to either criteria for a proper requirement for restriction. With respect to the first prong noted above (the "independence or distinctiveness prong"), the Examiner's bare assertion that the "application contains claims directed to ... patentably distinct species" is insufficient to meet the Examiner's initial burden of showing

independence or distinctness. With respect to the second prong noted above (the “serious burden prong”), the *MPEP* requires the Examiner to “show by appropriate explanation one of the following:” (i) separate classification of the inventions as claimed; (ii) separate status in the art when the inventions as claimed are classifiable together; or (iii) a different field of search is required to adequately search the subject matter covered by the claims (see *MPEP* §808.02). The undersigned respectfully submits the Examiner has not met her obligation with respect to establishing the serious burden prong. The Examiner’s restriction requirement fails to even attempt to describe or illustrate how the alleged distinct species would create a serious burden on the examiner. Specifically, the Office action contains no indication that the alleged distinct species are classified separately, have achieved separate status in the art or would require a different field of search. Based on the search performed in the parent case (i.e., US Patent No. 6,292,787), it appears all of the pending claims can be adequately searched within a field of search defined by class 705 (subclasses 36, 35, 38, 30 and 37) and class 707 (subclasses 4 and 10). For at least these reasons, the undersigned respectfully requests the Examiner to at least reconsider her restriction requirement and limit the restriction requirement to two groups (i.e., Group I consisting of claims 1-31 and 34-41 and Group II consisting of claims 32 and 33) and preferably withdraw the restriction requirement altogether and issue a substantive action on the merits with respect to all of the pending claims.

Conclusion

The undersigned respectfully submits the remarks presented herein have established a *prima facie* case for the restriction requirement has not been made out by the Examiner and/or that the restriction requirement is in error. Accordingly, the undersigned respectfully requests the Examiner to promptly issue a substantive action on the merits with respect to all of the pending claims.

Request for a Telephone Interview

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-284-5103.

Respectfully submitted,

HAMILTON & DESANCTIS

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By : /Michael A. DeSanctis/
Michael A. DeSanctis, Esq.
Reg. No. 39,957
Customer No. 64128
Ph: (303) 284-5103